Filed 3/20/12 In re Carlos C. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CARLOS C., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. CARLOS C., Defendant and Appellant.	B233338 (Los Angeles County Super. Ct. No. TJ18610)

APPEAL from an order of the Superior Court of Los Angeles County, Catherine J. Pratt, Commissioner. Affirmed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Carlos C., a minor, appeals an order declaring him a ward of the court (Welf. & Inst. Code, § 602) and sustaining an allegation of misdemeanor sexual battery (Pen. Code, § 243.4, subd. (e)(1)). We conclude that the evidence is sufficient to support the findings and order, and thus we affirm.

STATEMENT OF FACTS AND OF THE CASE

On February 22, 2010, the district attorney filed a petition against appellant, then age 12, under section 602 of the Welfare and Institutions Code, alleging a misdemeanor count of sexual battery pursuant to Penal Code section 243.4, subdivision (e)(1).[1] The case was tried to the court on May 24, 2011. The evidence was as follows.

The victim, J.R., testified that in December 2009, she was a seventh grade student at Whaley Middle School. She knew appellant, but they were not friends. On December 16, 2009, as she was walking to class, two boys named Mark and Jeffrey came up behind her, "touching my butt, slapping my butt." She was angry and uncomfortable, and she turned around to tell them to stop. As she turned around, appellant came up and "grabbed me from the front," "smack[ing]" her with an open hand in her crotch area. J.R. was mad, embarrassed, and "[k]ind of" scared. She chased appellant, and he ran away laughing. She asked appellant why he did it, and he said it was because "Mark and Jeffrey told him to." When she was not able to catch appellant, she decided to go to class. However, when she discovered she was late for class, she went to report the incident to her P.E. teacher.

Officer Mariano Venegas testified that he interviewed appellant at Whaley Middle School on December 17, 2009. Appellant told Officer Venegas that he knew the difference between right and wrong. He identified "respect[ing] adults" as an example of what was right, and "touching girls" as an example of what was wrong. He said that when a person does something wrong, "you get in trouble." In response to the officer's

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[1] The court dismissed a second misdemeanor sexual battery count at the conclusion of trial.

questions, he said that he knew it was wrong to touch a female student's intimate parts against her will or to help someone else to do so. He was taught this by his mother. Appellant told Officer Venegas that he touched J.R. because a friend had told him to do so. He said he had touched J.R. with his hand "in her private part between her legs."

At the conclusion of evidence, defense counsel made a motion to dismiss, arguing that there was no evidence of the third element of Penal Code section 243.4 or that appellant understood the wrongfulness of his actions, as required by *In re Gladys R.* (1970) 1 Cal.3d 855. The court denied the motion and found sufficient evidence to conclude beyond a reasonable doubt that the allegations of the petition were true. The court then placed appellant home on probation.

Appellant timely appealed.

DISCUSSION

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials.' (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) Thus, 'we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal. Under this standard, the critical inquiry is "whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citation.] An appellate court "must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citations.] [¶] In reviewing the evidence adduced at trial, our perspective must favor the judgment. [Citations.] "This court must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify

the trial court's findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.] [¶] Before the judgment of the trial court can be set aside for insufficiency of the evidence . . . , it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it. [Citation.]" [Citations.]' (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371-1372 . . . .)" (*In re Cesar V.* (2011) 192 Cal.App.4th 989, 994-995.)

Appellant contends the juvenile court's finding that he violated Penal Code section 243.4, subdivision (e)(1) is not supported by substantial evidence. That section provides: "Any person who touches an intimate part of another person, if the touching is against the will of the person touched, *and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse*, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment." (Italics added.) As used in this section, "touches" means "physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim." (*Id.*, subd. (e)(2).) "Intimate part" means "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female." (*Id.*, subd. (g)(1).)

Appellant contends, and the Attorney General appears to concede, there is no evidence that he touched J.R. for the purpose of sexual arousal or sexual gratification. The issue on appeal, therefore, is whether there is substantial evidence that the touching was for the purpose of "sexual abuse" within the meaning of the statute.

The parties agree that the only case to have addressed the meaning of "sexual abuse" as used in section 243.4, subdivision (e)(1) is *In re Shannon T.* (2006) 144 Cal.App.4th 618 (*Shannon T.*). There, the minor, a 14-year-old boy, went up to a 16-year-old girl at school and said, "'Get off the phone. You're my "ho."'" (*Id.* at p. 620.)

The girl, who was talking on her cell phone, replied "'whatever'" and began to walk to class. (*Ibid*.) The minor pursued the girl and said, "'Don't talk to me like that.'" (*Ibid*.) He then slapped her face, grabbed her arm, and pinched her breast, causing her to cry. The pinch resulted in a large purple bruise on her breast. (*Ibid*.) The juvenile court found that the minor committed sexual battery within the meaning of Penal Code section 243.4, subdivision (e), and the minor appealed, contending there was no evidence that he touched the victim "'for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.'" (*Id*. at p. 621.)

The Court of Appeal affirmed. It explained that abuse is not limited to physical injury; it includes emotional harm caused by offensive conduct. Thus, conduct intended to insult, humiliate, or intimidate a person is the "abuse" of that person. Accordingly, "sexual abuse" within the meaning of the statute includes the touching of a woman's breast, without consent, for the purpose of insulting, humiliating, or intimidating the woman, even if the touching does not result in physical injury. (*Shannon T*., *supra*, 144 Cal.App.4th at p. 622.)

The court said: "[T]he minor's purpose in pinching the victim's breast can be inferred from the act itself together with its surrounding circumstances. . . . [¶] It is true the victim testified on cross-examination that she and the minor had been friends and that they had engaged in 'playful hitting' and 'hugging' at the beginning of the school year. However, the evidence belies the minor's suggestion he was only 'play[ing] around' when he pinched the victim's breast. Moments before, the minor called the victim his 'ho' and demanded that she end the call she was making on her cell phone. When she replied 'whatever' and walked away, the minor chastised her by saying, 'Don't talk to me like that,' and slapped her in the face. He then grabbed her arm and pinched her breast. The victim began crying, was 'scared that [the minor] would do something else,' and reported the incident to school security. The security official, a woman, testified the victim was 'hysterical' and her face 'was all red' when she made the report. The next day, the victim showed a female counselor that the victim had suffered a significant bruise 'right above her left nipple.'

"These circumstances support a conclusion that the minor pinched the girl's breast for the specific purpose of insulting, humiliating, intimidating, and even physically hurting her. The minor was not a prepubescent boy who, acting in a fit of pique, grabbed the nearest available body part of a physically immature girl who refused to acquiesce in childish demands. He was a 14-year-old boy who insulted the 16-year-old victim and claimed dominance over her by calling her his 'ho' and by demanding that she end her cell phone call. When the victim did not obey his command, he slapped her on the face and purposely squeezed her breast near her nipple, hard enough to cause bruising. Like the slapping of the victim's face, it appears that the pinching of such a sensitive area of a female's body, her breast, was calculated to cause her pain in order to insult and humiliate her for her refusal to submit to what the minor perceived to be his dominance over her, and to intimidate her into complying with his demands.

"Consequently, the evidence supports the juvenile court's finding that the minor touched the victim on an intimate part of her body, her breast, for the purpose of 'sexual abuse' within the meaning of the sexual battery statute, section 243.4, subdivision (e)(1)." (*Shannon T.*, *supra*, 144 Cal.App.4th at pp. 622-623.)

Appellant contends the present case is distinguishable from *Shannon T.* because there is no evidence that he touched J.R. with the intent of insulting, humiliating, or intimidating her. Rather, he told Officer Venegas that he touched J.R. because the other boys told him to. Accordingly, he says, "the instant case appears to be an exact example of a young, sexually immature defendant engaging in the type of impulsive behavior the *Shannon T.* court specifically cites as not rising to the level of 'sexual abuse.' Here, appellant did not attempt to express his dominance by making 'demands' of J.R. by insulting her, yelling at her, or grabbing, pushing, hitting, or restraining her; he merely touched her in a childish manner and ran away giggling like the immature 12-year-old he was."

Although this is a close case, we do not agree that the only reasonable inference to be drawn from the evidence is that appellant lacked the intent required by the statute. Appellant told Officer Venegas that he touched J.R.'s crotch because two other boys told

him to, but this testimony, even if believed, was not inconsistent with an intent to humiliate and embarrass J.R. Rather, as in *Shannon T.*, the court was permitted to infer appellant's intent "from the act itself together with its surrounding circumstances." (*Shannon T.*, *supra*, 144 Cal.App.4th at p. 622.) By his own admission, appellant understood that he had touched an intimate part of J.R.'s body and that doing so was wrong. Further, he laughed as he did so and then ran away. Although the court could have concluded from this conduct that appellant was simply engaging in an impulsive, juvenile act, it was not required to do so. Instead, it reasonably could have concluded that appellant's laughing and running away was evidence that appellant understood that his action would embarrass and humiliate J.R. and, indeed, that appellant acted for the specific purpose of embarrassing and humiliating her. As such, there was substantial evidence to support the juvenile court's finding that appellant committed misdemeanor sexual battery within the meaning of Penal Code section 243.4, subdivision (e)(1).

DISPOSITION

The order of wardship is affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.